

ORDINANCE NO. 2812-06

**AN ORDINANCE OF THE CITY OF CITY COUNCIL
OF THE CITY OF SUNNYVALE AMENDING
CHAPTER 3.12 OF TITLE 3 OF THE SUNNYVALE
MUNICIPAL CODE PERTAINING TO UTILITY
USERS TAX ON INTRASTATE TELEPHONE
COMMUNICATION SERVICES**

WHEREAS, since 1969, the City of Sunnyvale has imposed a utility users tax on every person in the City using intrastate telephone communication services; and

WHEREAS, the City's utility users tax on intrastate telephone communication services has been applied consistent with the application of the Federal Excise Tax (FET) upon local and long distance telecommunication services as the FET is interpreted by the Internal Revenue Service (IRS); and

WHEREAS, on May 25, 2006, the Treasury Department announced in Notice 2006-50 that effective August 1, 2006, it will no longer apply the FET to long distance and bundled long distance and local service provided under a single plan that does not separately state the charges for local telephone service; and

WHEREAS, the Treasury Department's Notice 2006-50 reversed its prior Revenue Rulings and interpretation of the FET, which the City has relied upon in applying its utility users tax on intrastate telephone communications services; and

WHEREAS, by the adoption of this Ordinance amending the utility users tax on intrastate telephone communication services, the City reaffirms that it will continue its long-standing practice of applying its utility users tax on telephone communication services in a manner consistent with the IRS' interpretation of the FET which was in effect prior to the issuance of Notice 2006-50 on May 25, 2006.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SUNNYVALE DOES ORDAIN AS FOLLOWS:

SECTION 1. SECTION 3.12.030(11) AMENDED. Section 3.12.030(11) of Chapter 3.12 of Title 3 of the Sunnyvale Municipal Code is amended to read as follows:

3.12.030. Definitions.

* * *

(11) "Telephone communication services" means "communication services" as defined in Sections 4251 and 4252 of the Internal Revenue Code and the regulations thereunder, as those Sections were interpreted by the Internal Revenue Service before May 25, 2006, and shall include any telephonic quality communication that is interconnected to a public switched network, and shall include, without limitation, transmissions

(including but not limited to, voice, telegraph, teletypewriter, data, facsimile, video or text) by electronic, radio, or similar means through “interconnected service” with the “public switched network,” as these terms are commonly used in the Federal Communications Act, 47 U.S.C.A. Section 332(d) and the regulations of the Federal Communications Commission, whether such transmission occurs by wire, cable, fiber-optic, light wave, laser, microwave, radio wave, including, but not limited to cellular service, commercial mobile service, personal communications service (PCS), specialized mobile radio (SMR), and other types of personal wireless service telecommunications (see 47 U.S.C.A. Section 332(c)(8)(C)(i), regardless of the radio spectrum used, switching facilities, satellite or any other similar facilities.

SECTION 2. SECTION 3.12.070 AMENDED. Section 3.12.070 of Chapter 3.12 of Title 3 of the Sunnyvale Municipal Code is amended to read as follows:

3.12.070 Telephone users tax—Imposition Rate—Charges.

(a) There is hereby imposed a tax upon every person, other than a telephone corporation, using intrastate telecommunication services in the city. The tax imposed by this section and Sections 3.12.080 through 3.12.100 shall be at the rate of two percent of the charges made for intrastate telephone communication services, and shall be collected from the service user by the telephone communication services provider or its billing agent. To the extent allowed by law, the tax on intrastate telephone communication services shall apply to a service user if the billing or service address of the service user is within the city’s boundaries. If the billing address of the service user is different from the service address, the service address of the service user shall be used.

(b) “Telephone communications services” shall not include “private mobile radio service,” as defined in Part 20 of the Title 47 of the Code of Federal Regulations, or “private mobile service,” as defined in 47 U.S.C.A. Section 332 (d), which is not interconnected to a public switched network. The tax imposed under this chapter shall not be imposed upon any person for using intrastate telephone communication services to the extent that pursuant to Sections 4252 and 4253 of the Internal Revenue Code, the amounts paid for such communication services are exempt from or are not subject to the tax imposed under Section 4251 of the Internal Revenue Code, as those sections were interpreted by the Internal Revenue Service prior to May 25, 2006. In the event that the federal excise tax on “communications services” as provided in Sections 4251, 4252, and 4253 of the Internal Revenue Code is subsequently modified, any reference in this Chapter or in any administrative ruling to such law, including any related federal regulations, private letter rulings, case law, and other opinions

interpreting these sections, shall refer to that body of law as those sections were interpreted by the Internal Revenue Service prior to May 25, 2006.

(c) The tax administrator may, from time to time, issue and disseminate to telecommunication service suppliers, which are subject to the tax collection requirements of this chapter, an administrative ruling identifying those telecommunications services that are subject to taxation under this chapter. These administrative rulings shall remain in effect unless altered or amended by the tax administrator and these administrative rulings shall continue to be consistent with applicable legal requirements, including any federal excise tax rules, regulations, and laws pertaining to “communications services” as interpreted by the Internal Revenue Service before May 25, 2006.

(d) As used in this section, the term “charges” shall also include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the telecommunication services including (i) all monthly recurring charges for calling features purchased by the user; (ii) monthly service charges for services including foreign exchange service; (iii) charges for special listings in the white pages of the telephone directory; (iv) charges for non-published (unlisted) numbers; (v) directory assistance charges; (vi) message unit or zone rate charges; (vii) repair charges; and (viii) toll or long distance messages. If a non-taxable service and a taxable service are billed together under a single charge, the entire charge shall be deemed taxable unless the service provider can reasonably identify charges not subject to the utility users tax based upon its books and records that are kept in the regular course of business, which shall be consistent with generally accepted accounting principles.

(e) As used in this section, the term “charges” shall not, however, include:

- (i) customer deposits;
 - (ii) directory (Yellow Pages) advertising;
 - (iii) rental or sale of directories, reverse directories;
 - (iv) all charges for maritime mobile services as defined in Section 2.1 of Title 47 of the Code of Federal Regulations;
 - (v) private line service charges;
 - (vi) PBX charges (excluding trunk charges);
 - (vii) all charges made for Universal Life Line services,
- and
- (viii) services paid for by inserting coins in coin-operated telephones.

SECTION 3. **SECTION 3.12.080 AMENDED.** Section 3.12.080 of Chapter 3.12 of Title 3 of the Sunnyvale Municipal Code is amended to read as follows:

3.12.080. Telephone users tax—Exemption and exclusions.

Notwithstanding the provisions of Section 3.12.070, the tax imposed under Sections 3.12.070 through 3.12.100 shall not be imposed upon any person for using telecommunication services to the extent that the amounts paid for such services are exempt from or not subject to the tax imposed under Section 4251 of the Internal Revenue Code, as that Section was interpreted by the Internal Revenue Service before May 25, 2006, or under Part 20 (commencing with Section 41001) of Division 2 of the California Revenue and Taxation Code, and the regulations thereunder, except for the following charges, which are taxable under this section:

(a) Charges to a service user by a hotel or motel for intrastate telecommunication services used in the city when such charges are incidental to the right of occupancy in such hotel or motel. Collection of the tax shall be the responsibility of the hotel or motel; and

(b) Charges to a service user in the city by a telecommunication services provider, including but not limited to an alternative or nontraditional telephone service provider, a private communication service provider, or a competitive access provider, for providing intrastate telecommunication services used in the city.

SECTION 4. If this Ordinance is declared to be invalid, then the provisions of Chapter 3.12 as that Chapter read on July 24, 2006, will become effective.

SECTION 5. This Ordinance shall not be construed as imposing a new tax, extending or increasing an existing tax.

SECTION 6. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 7. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication once in The Sun, the official newspaper for publication of legal notices of the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held on July 25, 2006, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on _____, 2006, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

City Clerk
(SEAL)

Mayor

APPROVED AS TO FORM AND LEGALITY:

David E. Kahn, City Attorney